

March 22, 1999

**Testimony of William J. Leahy, Chief Counsel
of the Committee for Public Counsel Services, Before the Joint
Committee on Criminal Justice, Opposing the Governor's
Death Penalty Proposal**

The Committee for Public Counsel Services (CPCS) is and throughout its history has been unalterably opposed to reinstatement of the death penalty in Massachusetts. We stand with all major religious groups in condemning capital punishment because it promotes a culture of vengeance and hate. We stand with the former Speaker, Charles Flaherty, in opposing the death penalty because it repeats the murderous violence which it claims to abhor. We stand with virtually all the established and emerging democracies, which have abolished state executions as an embarrassing vestige of a less civilized, more bestial age. We stand with the Speaker, Thomas M. Finneran, who correctly and eloquently argues the inevitability of fatal error in any factfinding system which depends, as ours must, upon the judgment of fallible human beings. Finally we stand with our impoverished clients; who receive precious few fair shakes from the day they are born: for it is they, and they alone, who would be the guinea pigs in the state's doomed effort to determine, with exact and unerring justice, who shall live and who shall die.

As Chief Counsel for CPCS since 1991, I assign counsel in every case of first-degree murder in which the accused person is unable to hire an attorney. This responsibility affords me certain insights into aspects of this bill which have not, until now, received adequate attention.

- 1) This bill has an extremely broad scope. As a recent Boston Herald editorial noted, the number of death penalty-eligible categories has increased from nine in the original 1991 proposal, to no less than sixteen in this bill. My staff has conducted a survey of all murder assignments made by CPCS during 1998. The survey reveals that **at least 76% of all persons charged with first degree murder in 1998 would have been eligible for execution under this proposal.** (Please see the attachment, "Massachusetts Cases Eligible for the Death Penalty.") Mistakes are inevitable in the application of any death penalty statute, as our national experience

makes more and more clear with every new revelation of injustice. This damning reality is true, as I have previously argued, as to "any death penalty enactment, however carefully drafted and however conscientiously applied." This bill dramatically increases the risk of fatal error by its irresponsible overbreadth.

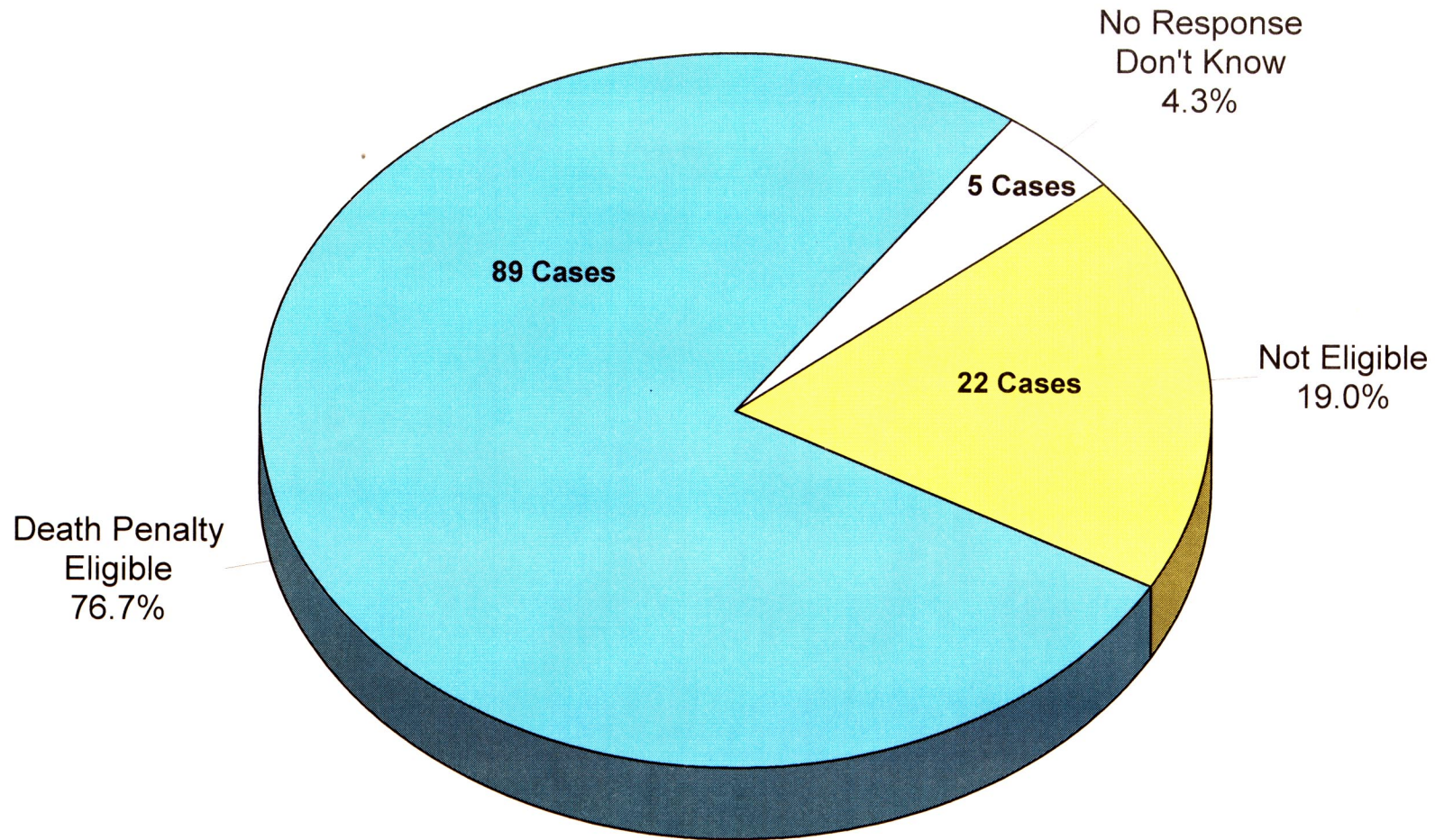
- 2) The death penalty is imposed in an arbitrary and capricious manner. One has only to observe the disparate treatment accorded two death-row inmates this year in the state of Missouri. On January 28, Governor Carnahan, after a personal appeal from Pope John Paul II, commuted the death sentence of triple murderer Darrell J. Mease, whose guilt was undenied. On March 10, he refused to intervene to stop the execution of Roy Roberts, whose conviction was based on highly questionable eyewitness evidence. Today's edition of Newsweek magazine says: "The results are perverse. Mease, who confessed to a grisly triple murder, is alive; Roy Roberts, who asserted his innocence and passed a lie-detector test, was executed[.]"
- 3) The death penalty operates in a racially discriminatory manner. Reputable studies have shown that the convicted killer of a white person is overwhelmingly more likely to be put to death than the killer of a black person. Capital punishment, as it actually operates today in the United States, conveys the insidious message that our justice system places a higher value on white lives than it does on black lives. This is not an indictment which we in Massachusetts can ignore. Charles Stuart's vicious lie that a black man murdered his wife and wounded him was all too readily accepted by the local media, the public, and the police. Willie Bennett was well on his way to a malicious and erroneous conviction and, had there been a death penalty in place, probable execution until Stuart's scheme unraveled. This bill contains no provision which addresses the issue of racial discrimination in death penalty prosecutions.
- 4) Because it is so very broad, this bill carries an enormous price tag, which its proponents have never attempted to estimate. The attached, very preliminary estimate of increased CPCS costs alone comes to over 47 million dollars per year. No one knows the short and long-term fiscal impact of this bill, because no one has asked. To propose a bill with this capacity for adverse

fiscal impact, without the slightest effort to estimate its cost throughout the criminal justice system, is an act of fiscal irresponsibility.

A broad death penalty bill such as this is the enemy of effective law enforcement. Massachusetts, which has been recognized as a national leader in effective approaches to reducing juvenile and street crime, has no legitimate public safety interest in seeing its effective crime prevention programs undermined by a sound-bite death penalty law whose principal result will be to siphon scarce law enforcement dollars from programs which have proven their effectiveness. Any legislator who is inclined to support this bill on the ground that it will increase public safety should consider carefully whether a clearly superior public safety benefit might be accomplished by provision of significant additional funding for crime prevention programs whose effectiveness is, unlike that of the death penalty, a proven fact.

- 5) Finally, Massachusetts does not need a death penalty in order to successfully deter the crime of murder. The most recent FBI national crime data, for 1997, show that our murder rate, at 1.9 per 100,000 population, is the sixth lowest in the nation. It is the lowest of any primarily urban state. It is far lower than the national average of 6.8. It is far lower than the murder rate of states which have used the death penalty. It is at its lowest level in 34 years; and it has been declining steadily in recent years. Clearly, we are already doing something effective to prevent murder in the state of Massachusetts. The question is, whether we shall continue to improve our successful anti-crime and anti-violence programs by giving them the increased attention and resources which their success has earned; or whether we shall interrupt this progress in order to fund a death penalty which does not deter crime, which swallows huge amounts of tax dollars, and which bitterly divides the populace. Our choice in Massachusetts should be clear. The last thing this Commonwealth needs is reinstatement of the death penalty.

MASSACHUSETTS CASES ELIGIBLE FOR THE DEATH PENALTY



**Calendar Year 1998
116 Murder Assignments**

SOURCE: Survey Of All Murder Cases Assigned During 1998
Committee For Public Counsel Services, March 22, 1999

Estimated Annual Cost Comparison Between "Life Without Parole" and "Death Penalty" Murder Assignments

I. CPCS Capital Defender Unit

<u>Death Penalty</u>	<u>No Death Penalty</u>	<u>Difference</u>
\$3.5 Million	\$0	\$3,500,000

II. Counsel Costs - Trial Stage

<u>Death Penalty</u> (based on 80 cases)	<u>No Death Penalty</u> (actual FY '98 expenditures)	<u>Difference</u>
\$30,148,800 (est.)	\$2,023,123	\$28,125,677

III. Counsel Costs - Appeal or Collateral

<u>Death Penalty</u>	<u>No Death Penalty</u> (actual FY '98 expenditures)	<u>Difference</u>
\$11,163,200 (est.)	\$1,012,492	\$10,150,708

IV. Extra Costs - Experts, Investigators, Mitigation Specialists

<u>Death Penalty</u>	<u>No Death Penalty</u>	<u>Difference</u>
\$8,000,000 (est.)	\$2,000,000 (est.)	\$6,000,000

Total Difference **\$47,776,385**

Source: Survey Of All Murder Cases Assigned During 1998
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